

*AS SECTION IS EXPECTED TO READ IN THE
PUBLISHED 2009 EDITION OF ORS*

94.630 Powers of association.

(1) Subject to subsection (2) of this section and except as otherwise provided in its declaration or bylaws, a homeowners association may:

(a) Adopt and amend bylaws, rules and regulations for the planned community;

(b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses and the reserve account established under ORS 94.595;

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

(d) Defend against any claims, proceedings or actions brought against it;

(e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:

(A) Matters relating to the collection of assessments and the enforcement of governing documents;

(B) Matters arising out of contracts to which the association is a party;

(C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;

(D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:

(i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Common property;

(E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:

(i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Required to facilitate repair to any common property; and

(F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;

(f) Make contracts and incur liabilities;

(g) Regulate the use, maintenance, repair, replacement and modification of common property;

(h) Cause additional improvements to be made as a part of the common property;

(i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;

(j) Grant easements, leases, licenses and concessions through or over the common property as provided in ORS 94.665;

(k) Modify, close, remove, eliminate or discontinue the use of common property, including any improvement or landscaping, regardless of whether the common property is mentioned in the declaration, provided that:

(A) Nothing in this paragraph is intended to limit the authority of the association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; and

(B) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the declaration, bylaws or ORS 94.647;

(L) Impose and receive any payments, fees or charges for the use, rental or operation of the common property and services provided to owners;

(m) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to owners. The rules must provide for written notice and an opportunity to be heard before the association may terminate the rights of any owners to receive the benefits or services until the correction of any violation covered by the rule has occurred;

(n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violat-

ions of the declaration, bylaws, rules and regulations of the association, provided that the charge imposed or the fine levied by the association is based:

(A) On a schedule contained in the declaration or bylaws, or an amendment to either that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners; or

(B) On a resolution of the association or its board of directors that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners;

(o) Impose reasonable charges for the preparation and recordation of amendments to the declaration;

(p) Provide for the indemnification of its officers and the board of directors and maintain liability insurance for directors and officers;

(q) Assign its right to future income, including the right to receive common expense assessments; and

(r) Exercise any other powers necessary and proper for the administration and operation of the association.

(2) Notwithstanding subsection (1) of this section, a declaration may not impose any limitation on the ability of the association to deal with a declarant that is more restrictive than the limitations imposed on the ability of the association to deal with any other person, except during the period of declarant control under ORS 94.600.

(3) A permit or authorization, or an amendment, modification, termination or other instrument affecting a permit or authorization, issued by the board of directors that is authorized by law, the declaration or bylaws may be recorded in the deed records of the county in which the planned community is located. A permit or authorization, or an amendment, modification, termination or other instrument affecting a permit or authorization, recorded under this subsection shall:

(a) Be executed by the president and secretary of the association and acknowledged in the manner provided for acknowledgment of instruments by the officers;

(b) Include the name of the planned community and a reference to where the declaration and any applicable supplemental declarations are recorded;

(c) Identify, by the designations stated or referenced in the declaration or applicable supplemental declaration, all affected lots and common property; and

(d) Include other information and signatures if required by law, the declaration, bylaws or the board of directors.

(4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative proceeding in which the association and an owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within the county in which the planned community is located that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party.

(b) If the party receiving the offer does not accept the offer within 10 days after receipt by written notice hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party, the initiating party may commence the litigation or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within the county in which the planned community is located and an offer to use the program is not made as required under paragraph (a) of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines. [1981 c.782 §36; 1999 c.677 §13; 2001 c.756 §13; 2003 c.569 §11; 2007 c.410 §2a; 2009 c. 641 §6]